

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JUANVA NAVARRO :

Plaintiff, : CIVIL NO. 12-CV-7625 (WHP)
- against - :

VINTAGE APPAREL GROUP, LLC., R. : ANSWER TO FIRST AMENDED
SISKIND & COMPANY, INC., DO DENIM, LLC, : COMPLAINT
RICHARD SISKIND, and JON SISKIND :

Defendants. :
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Defendants VINTAGE APPAREL GROUP, LLC., R. SISKIND & COMPANY, INC., DO DENIM, LLC, RICHARD SISKIND, and JON SISKIND (“Defendants”) by and through their attorney, Law Office of Barry R. Fertel, for their Answer to the First Amended Complaint (“the Complaint”), state as follows:

1. Deny each and every allegation set forth in paragraphs “1”, “6”, “7”, “8”, “15”, “17”, “40”, “46”, “50”, “55” of the Complaint except refers the Court to the statutes and regulations referenced therein for their true meaning and content.
2. Deny each and every allegation set forth in paragraphs “2”, “3”, “4”, “5”, “12”, “16”, “18”, “19”, “20”, “21”, “22”, “23”, “25”, “26”, “27”, “28”, “29”, “35”, “36”, “37”, “38”, “41”, “42”, “43”, “47”, “48”, “49”, “51”, “52”, “53”, “56”, and “57” of the Complaint.
3. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the Complaint.
4. Deny each and every allegation set forth in paragraph “10” of the Complaint, except admit that Defendant Vintage Apparel is a limited liability company existing under the laws of Floridaand has an office located at 1385 Broadway, Suite 2400, New York, New York 10018.

5. Admit the allegations set forth in paragraphs "11", "30", "31", "32", "33", and "34" of the Complaint.

6. Deny each and every allegation set forth in "13" of the Complaint except admit that Richard Siskin [sic] is a Florida resident.

7. Deny each and every allegation set forth in paragraph "14" of the Complaint except admit that Jon Siskin [sic] is a New York resident and is an officer of R. Siskind & Company, Inc.

8. In response to paragraphs "39", "44", and "54" of the Complaint, repeats and realleges each and every response set forth above.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. The Complaint fails to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

10. Defendant's pay practices are within the requirements of all applicable statutes and regulations of the New York State Department of Labor and the U.S. Department of Labor.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

11. Plaintiff's claims are barred in all or in part by the doctrines of waiver, laches and/or collateral estoppel.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

12. Plaintiff's claims are barred to the extent Defendant did not "suffer or permit" the alleged overtime work.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

13. Plaintiff is not entitled to any recovery under the Fair Labor Standards Act to the extent the actions taken by Defendant were taken in good faith in conformity with and in reliance on written and administrative regulation, order, ruling, approval, or interpretation, and/or administrative practice or enforcement policy, of the Department of Labor.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

14. Defendant acted in good faith to comply with the Fair Labor Standards Act and the New York State Labor Law, and with reasonable grounds to believe that its actions did not violate the statutes cited in the Amended Complaint, and Defendant asserts a lack of willfulness or intent to violate the Fair Labor Standards Act or the New York State Labor Law as a defense to any claim by Plaintiff for any penalty award or liquidated damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

15. To the extent any damages were sustained under the Fair Labor Standards Act by Plaintiff, which is expressly denied by Defendants, such damages should be calculated in accordance with 29 C.F.R. Section 778.114.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

16. Plaintiff's claims are barred to the extent Plaintiff failed, refused, and/or neglected to mitigate or avoid the damages complained of in the Amended Complaint, if any.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

17. Plaintiff is not entitled to punitive or liquidated damages under New York State Labor Law or the Fair Labor Standards Act because the actions and conduct of the Defendant were at all times taken in good faith and for legitimate and lawful business reasons.

WHEREFORE, Defendants demands judgment dismissing the complaint in its entirety, together with the costs and disbursements in this action and reasonable attorney's fees.

Dated: New Rochelle, New York
February 14, 2013

LAW OFFICE OF BARRY R. FERTEL



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